IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Rafiq Ahmed & others V/S Ramjani and anothers

S.B. Civil First Appeal
No.74/1984 against the judgment
and decree dated 1.6.1984 passed
by Shri Girdhar Lal Acharya,
District Judge, Sawaimadhopur in
Civil Regular Suit No. 8/1976.

Date of Judgment ::: September 12, **2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Reportable:

Mr. S.M. Mehta, Sr. Advocate
with
Mr. Anil Mehta } for the appellants
Mr. D.S. Porriya }
Mr. U.N. Bhandari, Sr. Advocate with
Mr. L.L. Jain for the respondent
Ms. Sangeeta Sharma for
Mr. G.K. Garg for the proforma respondent.

BY THE COURT:

This appeal under Section 96 CPC arises out of the judgment and decree dated 1.6.1984 passed by the learned District Judge, Sawai-madhopur, whereby the learned Judge has decreed the plaintiffs' suit.

Plaintiff Ramjani filed a suit against the defendants for declaration and possession on 0.1.1975.

On 5.5.1977 the plaintiff filed an application for amendment in the plaint, which, after hearing counsel for the parties, was allowed vide order dated 22.7.1977 and accordingly the plaintiff filed amended plaint on 6.8.1977. The plaintiff claimed himself to be the owner of the property, viz. 3 shops and 3 rooms on the floor of the shops as described in para 2 of the plaint on the basis of Patta issued on 15.9.58. He continued to reside in the rooms. Out of 3 shops, he gave center shop to his father Chand Khan for his residence and let out remaining shops to the tenants. It was averred that his mother died when he was 8 years old and after the death of his mother, his father got married to Smt. Bashiran, defendant No.2 and out of this wedlock defendants No. 1 and 3 to 7 were born. Feeling aggrieved by the behaviour of his father, due to his step mother, the defendant left his house in 1968 and started living in some other house. The plaintiff averred that his father with an intention to gulp shops in dispute filed a suit No. 180/71 for declaration and permanent injunction in the court of Munsiff, Sawai-madhopur, which came to be decided on 27.9.73. In that suit, the plaintiff filed written statement and moved

an application for requisition of original record containing original Patta, from Municipal Board, Sawai Madhopur. Chand Khan by filing application disclosed the fact that he had mortgaged the disputed shops to one Kanhaiyalal, father of Sri Narain, defendant No.8 andhanded over the Patta to Kanhaiyalal and Kanhaiyalal since died, the original patta be requisitioned from Narayan. During pendency of that suit, Chand Khan expired. After the death of Khan Khan, none prosecuted the said suit and accordingly the trial court dismissed the suit on 27.9.93. It appears that defendant No.8 also filed a suit for eviction and arrears of rent against the plaintiff defendants No. 1 to 7 in which the defendants No. 1 to 7 challenged the ownership and rights of the plaintiff over the disputed shops and claimed themselves to be in possession thereof in the capacity as owners. In fact, according to the plaintiff, the defendants had no concern with the shops in dispute. The plaintiff requested the defendants on several occasions to hand over physical possession of the shops in dispute to him, but the defendants deed not pay any heed. In the circumstances, therefore, the plaintiff had no option but to file the present suit.

The defendants No. 1 to 7 contested the suit by filing written statement and denied the averments of the plaint. According to the written statement, the property mentioned in para 2 of the plaint was the earned property of Chand Khan himself and Chand Khan got done the entire construction. It was further stated that the shop including room constructed over it towards east of the disputed property, situated adjacent to the shop of Rahim Bux was given in `Mehar' to Smt. Bashiran through a registered gift deed dated 28.7.66 and phyical possession of the same was also handed over to her and therefore, since that day, defendant No. 2 is exclusive owner of the same. As regards remaining property, namely, two shops and residential portions over these shops, it was stated that the same was given to Smt. Bashiran through a registered will dated 2.12.1972 for the purposes of maintenance and marriages of her bechlor daughters. It was further stated that after the death of Chand Khan on 29.6.73, Mst. Bashiran defendant No. 2 remained the only owner of the disputed property. According to the defendants, since the plaintiff tried to take forcible possession, therefore, the deceased Chand Khan had to

no option but the file the suit for declaration. The defendants stated that plaintiff has not stated as to how he gained the aforesaid property and in view of the gift deed and will in favour of defendant No.2, the plaintiff is not entitled to get declaration in his favour and that he has no right to get actual physical possession of the disputed property. The defendants have further stated that the suit having been filed in 1976 is barred by limitation. In the additional pleas, it has been stated that defendant No. 2 has been residing in the disputed property for last 40 years, while defendant No. 1 and 3 to 7 have been residing there since their birth and as such right of ownership has automatically accrued in their favour.

Defendant No. 8 has filed separate written statement, in which it has been stated that property in dispute which continued to be possession of Chand Khan father of defendants No.1 and 3to 7 and husband of defendant No. 2 Mst. Bashiran was mortaged by Chand Khan with his father Kanhaiyalal. According to defendant No.8, the other defendants are in possession of the disputed property and that defendants No. 1 to 7 have been residing in the disputed property in their

capacity as tenants. The liability over the disputed property is to the extent of Rs. 8000/-, to which the defendant No. 8 is entitled to receive. According to him, the plaintiff and defendants No. 1 to 7 are liable to pay the aforesaid sum for the reason that aforesaid amount was taken for the purposes of construction of disputed shops.

On the basis of pleadings of the parties, the learned trial court framed issues and at the conclusion of trial, the learned trial court vide its judgment and decree dated 1.6.84 decreed the plaintiff's suit. Hence the present appeal by defendants No. 1 to 7.

Challenging the findings arrived at by the trial court, Mr. Mehta, Sr. Advocate appearing for the defendant appellants has, inter-alia, strenuously contended that the sole basis of the plaintiff's case was that the property in dispute was partitioned by late Chand Khan during his life time. However, the plaintiff has miserably failed to prove the partition of the property. Mr. Mehta further contended that the learned trial court has committed serious error in declaring the plaintiff as owner of the suit premises and that too on the basis of Patta Ex. 4 issued by the

Municipal Board in favour of the plaintiff. According to him, there was hardly any occasion for the Municipal Board to have granted Patta. The plaintiff only applied for grant of permission to raise construction and the Muncipal Board first granted permission and then issued Patta. As such the approach of the learned trial court is erroneous inasmuch as the ownership cannot at all be derived on the basis of a Patta which is a subsequent document alleged to be issued by the Muncipal Board.

The next argument of Mr. Mehta is that there is an over-whelming evidence to show that Chand Khan and Ramjani were living jointly. It has also come in evidence that Chand Khan applied for permission to raise construction. He was an old and infirm person and therefore, merely by grant of permission to raise construction or issuance of patta in favour of Ramjani, it cannot be said that Ramjani has become owner of the property belonging to Chand Khan, unless and until the property is given to the plaintiff by owner himself. It has been argued that learned trial court has not discarded the defendants' evidence, but on the contrary it has held that properties in questions appears to have been constructed by Chand Khan and Ramjani

jointly. Some of the witnesses have stated that Chand Khan was an old man and therefore Ramjani used to help him. Thus, the trial court has has committed serious error in mis-interpreting the statements of the defendants' witnesses and has erred in drawing an erroneous inference from the statements to the effect that Ramjani was the owners of the disputed property and that he constructed the suit premises.

Learned counsel then argued that the court below has seriously erred in not taking into consideration the fact that the suit premises have been let out by Chand Khan and Smt. Basiran since long before filing the suit. Smt. Bashiran used to realise the rent. Some of the rent notes viz., Ex.A-1, A-11 and A-14 belong to the year 1958. According to him, the trial court has brushed aside the evidence regarding leting out the suit premises by Chand Khan and Smt. Bashiran in a very casual manner by observing that it did not effect the right of the plaintiff as owner of the disputed property.

Per contra, learned counsel for the plaintiff respondent has supported the findings arrived at by the learned trial court and argued that the trial court has

decreed the suit on appreciation of evidence in true perspective and hence the impugned judgment and decree call for no interference.

I have considered the rival submissions and gone through the impugned judgment and the evidence on record. Before proceeding further, it would be appropriate to first decide the application of the defendant appellants filed under Order 41 Rule 27 CPC which is still pending decision.

Through the application under Order 41 Rule 27 CPC the appellant has prayed for taking on record the original patta. It is mentioned in the application that the appellant on being informed by his advocate about the hearing of appeal collected all the papers and during search of documents in his Almirah, he found the original Patta along with original receipt issued by the Municipal Board. On perusing the original Patta and the receipt the appellant found that the same have been isued in the name of Shri Ramjani Chand Luharand not in the name of Ramjani S/O Chand. He also found that stamp papers were also issued in the name of Chand Khan S/O Imam Bux, while the name of Ramjani was interpolated on the name of Imam Bux. According to the appellant that

documents being more than 30 years old, their genuiness cannot be doubted. It has also been mentioned in the application that the disputed property was mortgaged by Chand Khan and probably under the belief that the original documents i.e. Patta and receipt are with the mortgagee the same could not be filed. It is submitted that the documents sought to be produced on record were not within the knowledge of the appellant. However, the documents were found in the documents of appellant's father Chand Khan only on 17.5.2006 and therefore, there was no deliberate or intentional act on the part of the appellant for not filing the same. The certified copy filing by the respondent is not the correct and it is only from the original document that true ownership of the property in dispute can be known. In these circumstances, it has been prayed that it would be in the interest of justice to take the aforesaid documents on recourt, inasmuch as the documents go to the root of the case.

When Ramjani moved an application on 4.5.1972 in Civil Suit No. 180/71 for requisition of record of the Municipal Board, Sawai Madhopur, Chand Khan disclosed that original Patta was handed over to Kanhaiya Lal at

the time of mortgage which is in his possession. While the fact remains that original patta was in possession of Chand Khan as alleged in the application under Order 41 Rule 27 CPC and he intentionally did not produce it during pendency of the suit.

Learned counsel appearing for the respondent, relying upon a decision of the Apex Court in The State of Gujrat & Another Vs. Mahendra Kumar Parshottam Bhai Desai (dead) by Lrs. (2006 (3) Supreme 754) has argued that the provisions of Order XLI Rule 27 CPC cannot be invoked by a party to fill up the lacuna in a case.

On the other hand, learned counsel for the appellant has contended that additional evidence can be admitted at any stage for the just and proper decision of the case. In support of his contention, relied upon a decision of the Apex Court reported in 2002 WLC (SC) Civil 726, and submitted that application be considered under Order XLI Rule 27(1)(b) of CPC.

Rule 27(i)(b) of Order XL! Can be invoked only if the court requires any document to be produced or any witnesses to be examined to enable it to pronounce judgment or for any substantial cause. In the instant case, the plaintiff claimed ownership in the suit

property on the basis of patta and he himself produced true copy of the Patta Ex.4. Therefore, it is not a case where appellants are trying to let in fresh evidence. Patta is the basic document and true copy of which is already on record. Therefore, original Patta if permitted to be taken in evidence for the purposes of pronouncement of judgment, no prejudice would be caused to the respondent. Thus the application filed by the appellant deserves to be allowed and it is allowed accordingly. The patta is ordered to be taken on record as an additional evidence.

It has also been argued that defendants moved an application under Order 13 Rule 2 CPC on 15.12.1983 with a prayer to allow production of Town Survey Sheet and copy of Khasra numbers so as to explain Ex. A/14.

I have considered the above argument and perused the documents and in my firm view, the argument has no substance, inasmuch as the learned trial court has rightly dismissed the application filed under O.13 R.2 CPC as the document sought to be produced had no relevance with the disputed property and therefore were not relevant for the just decision of the suit.

Now I advert to the merits of the case. Chand

Khan instituted a suit Ex. 5 in the year 1971 against his son Ramjani for declaration to the effect that he be declared as owner and in possession of the disputed shops and Ramjani be restrained from interfering in his possession on the allegation that Ramjani got entered his name in the patta which was issued in his name. Ramjani denied the averments of the plaint and filed written statement, Ex.6. It is evident that during pendency of suit, Chand Khan died and his legal representative Smt. Bashiran W/O Chand Khan Rafique S/O Chand Khan filed an application Ex. 15 with a prayer to bring them on record. However, the suit filed by Chand Khan came to be dismissed on 27.9.73 for non prosecution, inasmuch the legal representatives of Chand Khan were not present on the date fixed. The contention of the learned counsel for the respondent is that since the suit filed by Chand Khan stood abated by order dated 27.9.93, therefore, his legal representatives could not agitate the same issues which were the subject matter of the previous suit in the suit filed by Ramjani. In support of his contention, learned counsel has relied upon Kamatchi Ammal Vs. Athigamudaya (AIR 1969 Mad 426), wherein it was held as

under:

> "If the plaintiff whose suit has abated cannot bring a fresh suit on the same cause of action, and the earlier decision should be deemed to be a decision against him, he cannot get rid of the effect of the earlier decision just because he happens to be a defendant in a subsequent suit. Even in the subsequent suit where is he a defendant it should be held that he would be barred from agitating the same questions which he could have agitated in the earlier suit and which because of the provisions of O.22 R.9 he was prohibited from agitating in a subsequent suit as a plaintiff."

Learned counsel further contended that even when suit is not barred by the principles of res-judicata, then also respondent is prohibited from agitating the issues involved in the former suit, because abatement of suit amounts to conceding to groundsof attack of other party. To strengthen this argument, learned counsel has relied upon a decision of this court in Hari Ram Vs. Lichmaniya and others (AIR 2003 Raj. 319). Having gone through the decision of this court, it is evident that the above proposition of law was propounded in a case where a suit was withdrawn without permission of the court.

Per contra, learned counsel for the appellant strenuously contended that the suit filed by Chand Khan

was not heard and finally decided on merits by the court and therefore, it cannot operate as res- judicata and relied upon a decision of the Apex Court in State of Maharashtra and another Vs. National Construction Company, Bombay and anothers, reported in AIR 1996 SC 2367.

I have given my thoughtful consideration to the rival submissions. It is an admitted position that the suit filed by Chand Khan against Ramjani was dismissed only on the ground that after the death of Chand Khan his legal heirs could not be brought on record. Kamatchi Ammal's case (supra) relied upon by the counsel for the appellant was decided prior to the introduction of amendment in the Civil Procedure Code in 1976, by which Explanation to O.22 R.9 CPC came to be inserted by Code of Civil Procedure (Amendment) Act, 1976. Under sub rule (1) of Rule 9 of O.22, a fresh suit is barred when a suit abates or is dismissed for non-substitution of legal representatives of any of the deceased party. Explanation inserted in 1976 provides that abatement or dismissal of the suit should not operate as res-judicata and the cause of action of the abated suit may be invoked as a defence in a subsequent

suit. In this view of the matter, it must be held that the respondent is not precluded from invoking the cause of action of the abated suit as a defence in a suit filed by Ramjani.

It was next argued by the learned counsel for the respondent that Kalyanmal and Jeetmal executed a registered lease deed Ex.A-1 in favour of Chand Khan on 19.9.1958 and same was attested by the plaintiff/respondentg Ramjani, thereby admitting Chand Khan to be the owner of the disputed shop.

On the other hand, learned counsel for the appellant has contended that by mere attestation of a document, the knowledge of the contents of the document cannot be attributed to the attesting witnesses. In support of this argument, learned counsel has relied upon Rajammal alias Sundarammal and others Vs. Subapathi Pillai and another (AIR (32) 1945 Privy Council 82); Hamidmiya Sarfuddin and others Vs. Nagindas Jivanji and others (AIR 1933 Bombay 217); Bepin Behari Dandapat and others Vs. Trailakya Nath Dandapat and others (AIR 1927 Calcutta 933) and Fazal Hussain and others Vs. Jiwan Shah and another (AIR 1933 Lahore 551).

I have considered the rival submissions and have gone through the case laws relied upon by the counsel for the respondent. In my considered view the cases referred to above have no application to the facts and circumstances of the instant case, inasmuch as the plaintiff respondent himself has admitted the execution of lease deed Ex.1 in the name of his father Chand Khan and offered an explanation as to why Ex. 1 was executed in the name of his father and thus it is evident that Ramjani himself admits his knowledge of contents of lease deed, Ex.1. It is not in dispute that Ramjani lived with his father Chand Khan and there was no difference between them. Ramjani himself has deposed that in order to provide some money to his father, he got executed Ex.A/1 in favour of his father. This explanation of Ramjani, in my view, appears to be just, reasonable and bona fide. It may also be noted that mere rent deed is not sufficient to create ownership over the suit property in favour of Chand Khan.

Learned counsel for the appellants further contended that oral and documentary evidence brought on record clearly establish the fact that the property in question was owned and possessed by Chand Khan and mere

mention of the name of plaintiff along with Chand Khan in the Patta does not indicate that patta was isued to the plaintiff. On the contrary, it is proved that stamp of the Patta was purchased by Chand Khan and patta was issued in his name. Learned counsel for the appellants submitted that a perusal of the original Patta would make it abundantly clear that at the top of Patta the word `S/O' has been added later-on and it can be presumed that the same must have been done by some interested person.

To deal with the above argument, I have perused the true copy of Patta Ex.4 and it appears that at the top of it there is mention of an application having been submitted by Ramjani S/O Chand Khan seeking permission to construct shop with stone and bricks in place of clay built and that was not a part of Patta issued by the Municipal Board and that being so, the above argument of the counsel for the appellant has no legs to stand.

Learned counsel for the appellant further argued that on the reverse of the stamp of patta the original endorsement regarding purchase of stamp was in the name of Chand Khan S/O Imam Bux, but in place of Imam Khan,

the name of Ramjan Khan has been added by erasing the name Imam Khan.

A glance at the original patta clearly reflects that cutting was initialed. Further, Ramjani in his statement has deposed that Chand Khan received the patta and subscribed his natures A to B on it. Admittedly patta was in possession of Chand Khan and he did not produce it in the suit filed by him against Ramjani and took a false plea that he had handed over the patta to Kanhaiyalal at the time of mortgage. It also need be observed that patta was produced by the respondent through an application filed under O.41 R. 27 CPC and as such the patta remained in possession of Chand Khan and his legal representatives. Since the patta remained in possession of Chand Khan and his legal representatives, therefore, it cannot at all be believed that cutting on the patta, if any was made by the plaintiff respondent.

The plaintiff respondents has adduced oral and documentary evidence so as to prove that it was on his application that the Municipal Board issued patta, Ex.4.

It appears from the evidence on record that on

31.8.1956, plaintiff respondent Ramjani moved an application, Ex.1 to the Municipal Board for permission to raise construction of shop. On 12.8.1958, the Municipal Board got the site plan Ex.3 prepared. On 15.9.1958, the Muncipal Board passed an order in favour of Ramjani to pay Nazrana on the land measuring 113 Sq. yards @ Rs. 5 per Sq. yard and to grant patta in his favour. Fine of Rs. 11/- was also imposed for construction of shop without prior permission. Having observed these formalities, the Municipal Board issued Patta Ex.4 on 26.9.1959 in favour of Ramjani. In the order Ex.2 it is mentioned that Chand Khan submitted his patta on 28.9.1956. Considering the fact that out of total land, Nazrana of 111 Sq. land had already been paid by Chand Khan and for that land, patta was issued in his favour and Ramjani was granted patta for the remaining land measuring 113 Sq. yards. PW4 Bajrang Lal, the then Chairman of the Municipal Board has proved the fact that he passed an order Ex.2 and on the basis of which a Pata was issued in favour of Ramjani. It is thus evident that plaintiff respondent Ramjani had moved an application, Municipal Board passed an order for issuance of patta in his favour and

ultimately Patta Ex. 4 came to be issued in his favour. In this view of the matter the argument of the learned counsel for the petitioner that patta was issued in the name of Chand Khan and that Ramjani got entered his name in the patta has no legs to stand and hence rejected.

Mr. Mehta, Sr. Advocate appearing for the appellant has further argued that the plaintiff respondent in his statement has deposed that the property belonged to his father Chand Khan, who gave him the disputed property on partition. This statement of the plaintiff is at variance with what he has pleaded in the plaint. According to him, burden to prove ownership lies on the plaintiff and he cannot be permitted to take advantage of the weakness of the case of the defendants. In support of his argument, learned counsel has relied upon Md. Yunus Vs. Nabi Hossain (AIR 1982 Calcutta 488); G.S. Mahalaxmi Vs. Shah Ranchhoddas (AIR 1970 SC 2025); Sheodhari Rai Vs. Suraj Prasad Singh (AIR 1954 SC 758) and Trojan & Company Vs. Nagappa (AIR 1953 SC 235).

No doubt true that plaintiff has come with a case in the plaint that after receiving patta he constructed

the shops and on the basis of patta he claimed ownership over the disputed property. However, the plaintiff in his statement has deposed that his father gave him the disputed land in partition. He has further admitted that no deed of partition was written. Though there is no direct evidence on record to prove the above fact, yet the conduct of Chand Khan shows that he was willing to get the patta of disputed land in the name of plaintiff. Chand Khan himself submitted his patta of the land adjoining the disputed land, before the Municipal Board. Chand Khan himself secured the patta under his signatures. Till that time there was no dispute between the father and son. In the year 1970, Chand Khan by filing a Revision Petition No. 421 in the court of District Collector, Sawai Madhopur challenged the addition of name of Ramjani in the patta issued by the Municipal Board. At that time, relations of father and son were strained. That revision was dismissed vide order Ex.8. It appears that the disputed land was in possession of Chand Khan and he was willing to get the patta of the land in the name of Ramjani. Ultimately, pataa Ex.4 was issued in favour of Ramjani. However, the fact remains that land belonged to the Municipal

Board and the Municipal Board issued patta in favour of Ramjani and he became the owner of the land. Chand Khan had no title deed in his favour. For the reasons therefore, the argument of the learned counsel has no substance and is liable to be rejected.

Learned counsel appearing for the appellants has vehemently argued that the disputed property was got constructed by Chand Khan. Even the plaintiffs' witness Nana (PW2) has stated in categorical terms that the disputed property was got constructed jointly by Ramjani and Chand Khan. Thus the statement of PW2 Nanna is contrary to the case case set up by the plaintiffs.

Plaintiff Ramjani in his statement has deposed that he got constructed three shops within a span of 2 or 2-1/2 years after he received patta. Thereafter, within a period of one year he got constructed three room and `Medi' opver the disputed shops. PW2 Nanna submitted an application Ex.A/2 on 19.11.1955 to the Municipal Board, thereby lodging his complainant in respect of construction of spout and windows against Chand Khan having been raised by Chand Khan in the way, inasmuch as the said construction disturbed his privacy and created nuisance. Thus, the statement of this

witness appears to be only in relation to the construction raised by Chand Khan at the back side of the shops. PW3 Gaffar has deposed that front portion was got constructed by Ramjani and the back portion was got constructed by Chand Khan. PW5 Bhola Ram has also stated that three shops and medi were got constructed by Ramjani.

DW1 Rafique though had deposed that disputed shops and house were got constructed by Chand Khan, but he admitted in his cross examination that the shops were constructed at the verge of age of discretion. The witness had admitted that he was born in the year 1953-54. The witness further admitted that Chand Khan had partitioned his property in 1965 and had handed over possession of the shops situated near Nasiya Temple to Ramjani. Chand Khan purchased the portion of land situated behind the rooms in which Ramjani was residing. This portion of land was purchased in his name and possession thereof was handed over to him. The witness categorically admitted that Ramjani used to live in the rooms marked A and B in Ex.3 and Chand Khan got the patta of the land marked `C' in Ex/3 in his name. In this way, Rafique admitted map (Ex.3) of the

disputed property. He also admitted that Ramjani lived with them till 1965. He further admitted that patta of the property marked C in Ex.3 was issued in the year 1942-43. He clearly admitted that he is not in possession of the accounts concerning construction of shops. According to him, Chand Khan died in 1973. It is true that there is no partition deed in writing. However, Rafique admitted the fact of partition. He also admits that Ramjani lived with them till 1965. DW2 Basiran has deposed similar to what Rafique DW1 has deposed. She admits that Ramjani lived with them till 1965. Chand Khan died at the age of 80 years and 8-10 years prior to his death, he had stopped working. PW2 Ram Niwas and Jeet Mal were tenants in the disputed shops and they executed lease deed Ex.A/11 and A/1 in favour of Chand Khan. Jeetmal has deposed that he had talked to Ramjani to let the shop on rent to him. Since Chand Khan was an old person, therefore, Ramjani used to earn livelihood for the entire family. He could not state as to who invested money in construction of shops. PW5 Gafoor Khan also admitts that Chand Khan did not work for last 20-25 years prior to his death. Ramjani stated working at the age of 10-12 years. He

clarified that Chand Khan was head of the family and therefore he stated on his estimation that Chand Khan invested money in constructing the shops. PW8 Gulab Chand has stated that at the time when shops and house were contructed, Ramjani was the earning members of the family and Chand Khan had no income. This witness could not state as to who invested money in getting the shops constructed. Other witnesses examined on behalf of the defedants could not prove the fact that Chand Khan got constructed the shops and rooms.

Having considered the evidence adduced by the respective parties, it becomes evident that when shops and rooms were constructed, Chand Khan, Ramjani and other family members lived together. At that time, Chand Khan was an old person and Ramjani was the only bread earner of the entire family. During this period, the shops were rented out to different persons (some of them have been examined in evidence)in the name of Chand Khan. It is further evidence that all the family members lived together and relations between father and son were cordial. That being so, with a view to provide some funds to Chand Khan, Ramjani got the lease deeds executed in his favour. When Ramjani left the house and

decided to live separately, Chand Khan executed a gift deed Ex.A/12 on 28.7.1966 in favour of his wife Mst. Basiran. Thereafter he executed a will Ex.A/13 on 1.11.1973 in favour of Mst. Basiran. After execution of will, Mst. Basiran let out the shops on rent vide Ex.A/3, A/5, A/6, A/9, A/10 and A/28 to Rajendra Singh, Dayal Singh, Dhananjay Kumar, Jasbir Singh, Abdulla and Nazir Hussain. It further appears that gift deed, will and lease deed were executed in favour of Mst. Basiran after Ramjani left the house in the year 1965. Since it is proved that Municipal Board issued Patta Ex.4 in the year 1958 in favour of Ramjani and Ramjani got constructed the disputed property, therefore, Chand Khan had no right to execute the will and gift deed in favour of Basiran, in respect of the property of Ramjani. In this view of the matter, the rent deeds executed in favour of Mst. Basiran are of no evidentiary value so as to prove the title. The documents Ex.A/17 to A/25 pertain to the back portion of disputed property.

No other point has been agitated at the time of hearing of the appeal.

For the reasons aforesaid, it must be concluded

that the trial court, on consideration of evidence adduced on behalf of respective parties in true perspective has rightly decreed the plaintiffs' suit and therefore, the judgment and decree impugned in this appeal call for no interference.

Consequently, the appeal being devoid of merit is liable to be dismissed and it is dismissed accordingly. In the facts and circumstances of the case, the parties are left to bear their own costs.

(Khem Chand Sharma), J.

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